

HOUSE SUBSTITUTE  
FOR  
SENATE SUBSTITUTE  
FOR  
SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 280

AN ACT

2 To repeal sections 191.227, 538.210, and  
3 538.225, RSMo, and to enact in lieu thereof  
4 four new sections relating to tort reform.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
6 AS FOLLOWS:

7 Section A. Sections 191.227, 538.210, and 538.225, RSMo,  
8 are repealed and four new sections enacted in lieu thereof, to be  
9 known as sections 191.227, 538.210, 538.225, and 538.226, to read  
10 as follows:

11 191.227. 1. All physicians, chiropractors, hospitals,  
12 dentists, and other duly licensed practitioners in this state,  
13 herein called "providers", shall, upon written request of a  
14 patient, or guardian or legally authorized representative of a  
15 patient, furnish a copy of his record of that patient's health  
16 history and treatment rendered to the person submitting a written

1 request, except that such right shall be limited to access  
2 consistent with the patient's condition and sound therapeutic  
3 treatment as determined by the provider. If the patient is  
4 deceased, persons described in subdivisions (2), (3), (4), (5),  
5 (6), and (7) of subsection 2 of section 194.220, RSMo, shall be  
6 authorized to consent to the release of medical records pursuant  
7 to this section. Beginning August 28, 1994, such record shall be  
8 furnished within a reasonable time of the receipt of the request  
9 therefor and upon payment of a handling fee of fifteen dollars  
10 plus a fee of thirty-five cents per page for copies of documents  
11 made on a standard photocopy machine.

12 2. Notwithstanding provisions of this section to the  
13 contrary, providers may charge for the reasonable cost of all  
14 duplications of medical record material or information which  
15 cannot routinely be copied or duplicated on a standard commercial  
16 photocopy machine.

17 3. The transfer of the patient's record done in good faith  
18 shall not render the provider liable to the patient or any other  
19 person for any consequences which resulted or may result from  
20 disclosure of the patient's record as required by this section.

21 4. Effective February first of each year, the handling fee  
22 and per-page fee listed in subsection 1 of this section shall be  
23 increased or decreased annually based on the annual percentage  
24 change in the unadjusted, U.S. city average, annual average  
25 inflation rate of the medical care component of the Consumer

1 Price Index for All Urban Consumers (CPI-U). The current  
2 reference base of the index, as published by the Bureau of Labor  
3 Statistics of the United States Department of Labor, shall be  
4 used as the reference base. For purposes of this subsection, the  
5 annual average inflation rate shall be based on a twelve-month  
6 calendar year beginning in January and ending in December of each  
7 preceding calendar year. The department of health and senior  
8 services shall report the annual adjustment and the adjusted  
9 handling and per-page fees on the department's Internet website  
10 by February first of each year.

11 538.210. 1. In any action against a health care provider  
12 for damages for personal injury or death arising out of the  
13 rendering of or the failure to render health care services, no  
14 plaintiff shall recover more than [~~three~~] four hundred fifty  
15 thousand dollars [~~per occurrence~~] for noneconomic damages from  
16 any one defendant as defendant is defined in subsection 2 of this  
17 section.

18 2. "Defendant" for purposes of sections 538.205 to 538.230  
19 shall be defined as:

20 (1) A hospital as defined in chapter 197, RSMo, and its  
21 employees and physician employees who are insured under the  
22 hospital's professional liability insurance policy or the  
23 hospital's self-insurance maintained for professional liability  
24 purposes;

25 (2) A physician, including his nonphysician employees who

1 are insured under the physician's professional liability  
2 insurance or under the physician's self-insurance maintained for  
3 professional liability purposes;

4 (3) Any other health care provider having the legal  
5 capacity to sue and be sued and who is not included in  
6 subdivisions (1) and (2) of this subsection, including employees  
7 of any health care providers who are insured under the health  
8 care provider's professional liability insurance policy or  
9 self-insurance maintained for professional liability purposes;

10 (4) No hospital shall be liable to any plaintiff based on  
11 the action or omissions of any physicians or any physician who is  
12 not an employee of that hospital, regardless of the existence of  
13 any facts or circumstances which may support a finding that the  
14 physician is an agent of the hospital provided that the physician  
15 is insured for the claim asserted.

16 3. In any action against a health care provider for damages  
17 for personal injury or death arising out of the rendering of or  
18 the failure to render health care services, where the trier of  
19 fact is a jury, such jury shall not be instructed by the court  
20 with respect to the limitation on an award of noneconomic  
21 damages, nor shall counsel for any party or any person providing  
22 testimony during such proceeding in any way inform the jury or  
23 potential jurors of such limitation.

24 4. Effective January 1, 2008, the limitation on awards for  
25 noneconomic damages provided for in this section shall be

1 increased or decreased on an annual basis effective January first  
2 of each year in accordance with the Implicit Price Deflator for  
3 Personal Consumption Expenditures as published by the Bureau of  
4 Economic Analysis of the United States Department of Commerce.  
5 The current value of the limitation shall be calculated by the  
6 director of the department of insurance, who shall furnish that  
7 value to the secretary of state, who shall publish such value in  
8 the Missouri Register as soon after each January first as  
9 practicable, but it shall otherwise be exempt from the provisions  
10 of section 536.021, RSMo.

11 5. Any provision of law or court rule to the contrary  
12 notwithstanding, an award of punitive damages against a health  
13 care provider governed by the provisions of sections 538.205 to  
14 538.230 shall be made only upon a showing by a plaintiff that the  
15 health care provider demonstrated willful, wanton or malicious  
16 misconduct with respect to his actions which are found to have  
17 injured or caused or contributed to cause the damages claimed in  
18 the petition.

19 538.225. 1. In any action against a health care provider  
20 for damages for personal injury or death on account of the  
21 rendering of or failure to render health care services, the  
22 plaintiff or [his] the plaintiff's attorney shall file an  
23 affidavit with the court stating that he or she has obtained the  
24 written opinion of a legally qualified health care provider which  
25 states that the defendant health care provider failed to use such

1 care as a reasonably prudent and careful health care provider  
2 would have under similar circumstances and that such failure to  
3 use such reasonable care directly caused or directly contributed  
4 to cause the damages claimed in the petition.

5 2. The health care provider who offers such opinion shall  
6 have education, training, and experience in a like area of  
7 expertise as the defendant health care provider. The affidavit  
8 shall state the qualifications of such health care providers to  
9 offer such opinion.

10 3. A separate affidavit shall be filed for each defendant  
11 named in the petition.

12 4. Such affidavit shall be filed no later than ninety days  
13 after the filing of the petition unless the court, for good cause  
14 shown, orders that such time be extended.

15 5. If the plaintiff or his attorney fails to file such  
16 affidavit the court [may] shall, upon motion of any party,  
17 dismiss the action against such moving party without prejudice.

18 538.226. 1. The portion of statements, writings, or  
19 benevolent gestures expressing sympathy or a general sense of  
20 benevolence relating to the pain, suffering, or death of a person  
21 shall be inadmissible as evidence of an admission of liability in  
22 a civil action. A statement of fault, however, which is a part  
23 of, or in addition to, any of the above shall not be inadmissible  
24 pursuant to this section.

25 2. As used in this section "benevolent gestures" means

- 1 actions which convey a sense of compassion or commiseration
- 2 emanating from humane impulses.